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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,896	08/27/2003	Volker Block	304-813	5101
30448	7590	02/22/2005		EXAMINER
AKERMAN SENTERFITT				GONZALEZ, MADELINE
P.O. BOX 3188			ART UNIT	PAPER NUMBER
WEST PALM BEACH, FL 33402-3188			2859	

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/648,896	BLOCK ET AL.	
	Examiner	Art Unit	
	Madeline Gonzalez	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 February 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 and 14-21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-11 and 14-21 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 27 August 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

In response to applicant's amendment dated February 3, 2005

Claim Objections

1. Claim 11 is objected to because of the following informalities:

- a) Claim 11: "is" in line 2 should be replaced with --are--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8, 10 and 14-21 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Wilson (U.S. 1,246,799).

Wilson discloses a device for determining the temperature of a flowable medium wherein said medium flows through a duct 1 with a cross-section, as shown in Figs. 1-3, having:

- a temperature sensor 8 and a probe body;

- wherein said probe body has several elongated probe sections 5 connected to a base member 6;
- wherein said probe sections 5 extend into said duct 1;
- wherein said temperature sensor 8 is arranged on said probe body in conductive thermal contact therewith;
- wherein said temperature sensor 8 is located on said base member 6 and is outside said duct 1;
- wherein said probe sections 5 extend through said entire cross-section of said duct 1;
- wherein said probe sections 5 are straight and parallel;
- wherein said probe sections 5 are equidistant to one another;
- wherein said probe sections 5 are rod-like;
- wherein said probe sections 5 are spaced from one another with free gaps, said free gaps between two adjacent of said probe sections 5 being roughly of the order of magnitude of said probe sections 5 at right angles to a flow direction of said medium;
- wherein there is a flow cross-section for said medium through said probe sections 5 and said probe sections 5 have an end face in said duct 1, wherein said flow cross-section is roughly as large as the sum of said end faces of said probe sections 5 in said duct 1;
- wherein said probe sections 5 extend in said medium flow direction about the same as at right angles thereto;
- wherein said probe sections 5 are connected in one piece with said base member 6;
- wherein said device is connected to a heater 2, as shown in Fig. 4;

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- wherein said heater 2 has a heat transfer member 5 extending into said duct 1;
- wherein said medium has a flow direction and said probe body 5 is positioned downstream of said heater 2 in said medium flow direction;
- wherein said temperature sensor is integrated into a heating element, as shown in Fig. 2; and
- wherein said heating element is a thick film element.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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6. Claims 9 and 11 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (U.S. 1,246,799) in view of Benedict (U.S. 3,623,367).

Wilson discloses all the subject matter claimed above in paragraph 3 with the exception of a base member extending slightly into the duct, and the probe body of the base member and the probe sections being made entirely in one piece.

With respect to the base member extending slightly into the duct: Benedict discloses an apparatus, as shown on Fig. 1, having a probe body 14 having a base member 38 from which a probe section 30 projects and said base member 38 extends slightly into a duct 10, said base member 38 supports said probe body 14. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a base member as taught by Benedict to the probe body disclosed by Wilson in order to provide a better support for the probe body.

With respect to the probe body of the base member and the probe sections being made entirely in one piece, as stated in claim 11: This claim is considered a "product by process" claim since it is directed to a product, i.e., probe body and probe sections, but contain process steps for making the probe body and probe sections. Accordingly, the process steps have been given no patentable weight since it has been held that 1) the determination of patentability in "product by process" claims is based on the product itself, even though such claims are limited and defined by the process, and 2) the product in a "product by process" claim is unpatentable if it is the

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same as, or obvious from a product of the prior art, even if the prior art product was made by a different process. In re Thorpe et al., 227 USPQ 964 (Fed. Cir. 1985).

Response to Arguments

7. Applicant's arguments, see page 5, lines 20-22, filed on February 3, 2005, with respect to the rejection(s) of claim(s) 1-11, 14-16 and 19-21 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection has been made as stated above.

Conclusion

8. Applicant's amendment dated October 14, 2004 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243.

The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG

GAIL VERBITSKY
PRIMARY EXAMINER



Diego F.F. Gutierrez
Supervisory Patent Examiner
Technology Center 2800